

**DECLARATION AND POWER OF  
ATTORNEY ORIGINAL PATENT APPLICATION**

As a below named inventor, I hereby declare that: "Express Mail" Mailing Label No. EL140316981W  
Date of Deposit Aug. 6, 1998

**Type of Application**

This declaration is for the following type application:

- X   Original
- Design
- National Stage of PCT
- Divisional
- Continuation
- Continuation-in-Part (CIP)

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Name Giny Wallace  
(typed or printed)  
Signature Giny Wallace

**Inventorship Identification**

My residence, post office address and citizenship are as stated below next to my name, I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

**TREATMENT OF PIGMENTED TISSUES  
USING OPTICAL ENERGY**

**Specification Identification**

The specification of which:

- X   is attached hereto.
- was filed on \_\_\_\_\_ as Application Serial No. \_\_\_\_\_.
- was described and claimed in PCT International Application No. \_\_\_\_\_ filed on \_\_\_\_\_ and as amended under PCT Article 19 on \_\_\_\_\_ (if any).

09430613.030698

## Acknowledgement of Review of Papers and Duty of Candor

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to the examination of this application in accordance with Title 37, Code of Federal Regulations, § 1.56, which provides:

(a) A patent by its very nature is affected with a public interest. The public interest is best served, and the most effective patent examination occurs when, at the time an application is being examined, the Office is aware of and evaluates the teachings of all information material to patentability. Each individual associated with the filing and prosecution of a patent application has a duty of candor and good faith in dealing with the Office, which includes a duty to disclose to the Office all information known to that individual to be material to patentability as defined in this section. The duty to disclose information exists with respect to each pending claim until the claim is canceled or withdrawn from consideration or the application becomes abandoned. Information material to the patentability of a claim that is canceled or withdrawn from consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner described by §§ 1.97 (b)-(d) and 1.98. However, no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine; (1) prior art cited in search reports of a foreign patent office in a counterpart application, and (2) the closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.

(b) Under this section, information is material to patentability when it is not cumulative to information already of record or being made of record in the application, and

(1) it establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or

(2) it refutes, or is inconsistent with, a position the applicant takes in:

(i) opposing an argument of unpatentability relied on by the Office, or

(ii) asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in an attempt to establish a contrary conclusion of patentability.

(c) Individuals associated with the filing or prosecution of a patent application within the meaning of this section are:

- (1) each inventor named in the application;
- (2) each attorney or agent who prepares or prosecutes the application; and
- (3) every other person who is substantively involved in the preparation or prosecution of the application and who is associated with the inventor, with the assignee or with anyone to whom there is an obligation to assign the application.

(d) Individuals other than the attorney, agent or inventor may comply with this section by disclosing information to the attorney, agent, or inventor.

\_\_\_\_\_ In compliance with this duty there is attached an information disclosure statement, 37 CFR 1.97.

I do not know and do not believe that the invention was ever known or used in the United States of America before my or our invention thereof; I do not know and do not believe that the invention was ever patented or described in any printed publication in any country before my or our invention thereof or more than one year prior to this application; I do not know and do not believe that the invention was in public use or on sale in the United States of America more than one year prior to this application; and the invention has not been patented or made the subject of an inventor's certificate issued before the date of this application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to this application.

09130243-080698

### Priority Claim

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent or inventor's certificate or of any PCT international application(s) designating at least one country other than the United States of America listed below and have also identified below any foreign application(s) for patent or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed by me on the same subject matter having a filing date before that of the application(s) of which priority is claimed.

  X   No such applications have been filed.

       Such applications have been filed as follows.

Country	Application Number	Date of Filing (Month/Day/Year)	Priority Claimed	
			Yes	No

### Claim For Benefit Of Earlier U.S. Application Under 35 USC §120

I hereby claim the benefit under Title 35, United States Code, § 120 of any U.S. application(s) for patent that is listed below.

Country	Application Number	Date of Filing	Patent	Pending
U.S.	08/739,801	October 30, 1996		Yes

Declaration

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor H. Craig Dees  
Country of Citizenship U.S.A.  
Residence 1006 Wyndham Way, Apt. 1517, Knoxville, Tennessee 37923  
Post Office Address 1006 Wyndham Way, Apt. 1517, Knoxville, Tennessee 37923  
Inventor's Signature *H. Craig Dees* Date 8/4/98

Full name of second joint inventor, Eric A. Wachter  
Country of Citizenship U.S.A.  
Residence 138 Bay Path Drive, Oak Ridge, Tennessee 37830  
Post Office Address 138 Bay Path Drive, Oak Ridge, Tennessee 37830  
Inventor's Signature *E. A. Wachter* Date 9 August 1998

Full name of third joint inventor, if any \_\_\_\_\_  
Country of Citizenship \_\_\_\_\_  
Residence \_\_\_\_\_  
Post Office Address \_\_\_\_\_  
Inventor's Signature \_\_\_\_\_ Date \_\_\_\_\_

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

H. Craig Dees, et al.

Serial No.:

Filed: Herewith

For: Treatment of Pigmented Tissues  
Using Optical Energy

Examiner:

Art Unit:

EL140316981K  
"Express Mail" Mailing Label No.

Date of Deposit Aug. 6, 1998

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

Name Ging Wallace  
(typed or printed)

Signature Ging Wallace

Assistant Commissioner for Patents  
Washington D.C. 20231

August 6, 1998

APPOINTMENT OF ASSOCIATE ATTORNEYS

Sir:

Please recognize the following as my associate attorneys in the above captioned application:

Granger Cook Jr.	Reg. No. 18,383
Gary W. McFarron	Reg. No. 27,357
Stephen B. Heller	Reg. No. 30,181
Andrew G. Kolomayets	Reg. No. 33,723
Mark J. Murphy	Reg. No. 34,225
John R. Lagowski	Reg. No. P41,922

Respectfully submitted,

Edward D. Manzo

Edward D. Manzo  
Attorney of Record  
Registration No. 28,139

COOK, McFARRON & MANZO  
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869080 ET20ET60

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Dees et al.

Serial No.: 09/130213

Filed: Herewith

For: Treatment Of Pigmented Tissues  
Using Optical Energy

Examiner:

Art Unit:

) "Express Mail" Mailing Label No. EL140311981US

) Date of Deposit Aug. 16, 1998

) I hereby certify that this paper or fee is being  
) deposited with the United States Postal Service  
) "Express Mail Post Office to Addressee" service  
) under 37 CFR 1.10 on the date indicated above  
) and is addressed to the Assistant Commissioner  
) for Patents, Washington, D.C. 20231

) Name Ging Wallace  
) (typed or printed)

) Signature Ging Wallace

August 4, 1998

ASSIGNEE'S STATEMENT OF STATUS  
AS A SMALL ENTITY

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

The undersigned Declarant, on behalf of the assignee of the captioned application, respectfully submit this verified STATEMENT OF STATUS AS A SMALL ENTITY pursuant to 37 C.F.R. §1.9 and 1.27.

1. PHOTOGEN, INC. a Tennessee corporation existing under the State of Tennessee is the Assignee of the entire right, title and interest in the above-identified patent application of H. Craig Dees and Eric A. Wachter filed herewith as shown by the Assignment, a copy of which is attached hereto.

2. Declarant is the Secretary of PHOTOGEN, INC. a corporation organized and existing under the laws of the State of

Tennessee, having offices at 7327 Oak Ridge Highway, Knoxville, Tennessee 37931. Declarant is empowered to act on behalf of PHOTOGEN, INC. for matters relating to prosecution of the above-identified patent application.

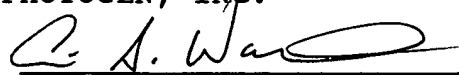
3. PHOTOGEN, INC. has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license any rights in the invention or application to any person.

4. PHOTOGEN, INC. is a small business concern as defined by 37 C.F.R. §1.9(d), having fewer than 500 employees.

Declarant acknowledges PHOTOGEN'S obligation to notify the United States Patent Office, prior to or at the time of paying the issue fee in this case, of any change in its status as a small business concern, or of any obligation to assign, grant, convey or license or any actual assignment, grant, conveyance, or license of the above cited patent application to other than a small entity as defined by 37 C.F.R. §1.9.

Declarant acknowledges that willful false statements and the like so made herein are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of any patent resulting therefrom.

Dated: 4 August 1998

PHOTOGEN, INC.  
BY:   
Eric A. Wachter  
Secretary